IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

Criminal Appeal No.39-DB-1998
Date of decision: 31.01.2007

Pawanjit Singh

-----Appellant..

Vs.

State of Punjab.

-----Respondent.

CORAM:- HON'BLE MR JUSTICE ADARSH KUMAR GOEL
HON'BLE MR JUSTICE H.S. BHALLA

Present: Mr. Vinod Ghai, Advocate
for the appellant.

Mr. M.S. Sidhu, Sr. DAG, Punjab.

Adarsh Kumar Goel, J.

The appellant challenges his conviction inter-alia under Section 302 IPC and sentence to undergo imprisonment for life.

Though originally there were ten accused, two of them namely Yadwinder @ Yadu and Paramjit Singh died and seven of them namely Gurlal Singh, Kewal Singh, Nirmaljit Singh, Balwant Singh, Narinder Singh, Karnail Singh and Waryam Singh absconded and were declared proclaimed offenders.

FIR was registered on the statement of PW-5 Rupinder Singh, recorded by SI Amarjit Singh, Addl. SHO on 12.11.1991 at 9.15 A.M. and special report was received by JMIC, Zira at 3.00 P.M. on the same day.

According to the said statement, on 11.11.1991 at 6/6.30 P.M. when Rupinder Singh was standing on the roof of his house, adjacent to the house of his brother Baltej Singh, he saw that 10 to 12 persons armed with fire-arms came from the western side of the house of Baltej Singh. He could identify Yadwinder Singh, Paramjit Singh, Kewal Singh and Pamma (appellant herein). They took positions and gave abuses, asking Baltej Singh to produce his brother-in-law

Balbir Singh, who was in police service. They started firing at Baltej Singh, who also returned fire. The assailants made a hole in a portion of the roof of the room, poured kerosene oil and set the room on fire, on account of which, his nephew Pardeep Singh, his niece Kulwinder Kaur and sister-in-law Manjeet Kaur rushed out of the room. The assailants fired shots with their weapons, resulting in death of Pardeep Singh and Kulwinder Kaur on the spot. Manjit Kaur received injuries and she fell down. She was taken to the hospital for treatment.

It further came out from the statement of Baltej Singh (Exh.DA) that one of the assailants also died on account of the shot fired by Baltej Singh. The assailants also threw a bomb inside the room. Household articles were also burnt in the fire. After the incident, the assailants were talking that they should run away as the police was about to come. Baltej Singh chased them for some distance, but he could not walk longer, because of burn injuries on his left foot. Later, Harnek Singh came to him and removed him to the hospital. The incident took place as the terrorists wanted to take revenge from his brother-in-law Balbir Singh, who was posted in Punjab Police at CIA Staff. Manjit Kaur also suffered a fire shot on her right thigh and was admitted to the hospital.

SI Amarjit Singh visited the place of occurrence, prepared inquest reports on the dead bodies of Kulwinder Kaur and Pardeep Singh and sent the same for post-mortem examination. He also collected cartridges of A.K. 47 pistol and bloodstained earth. He prepared a rough site plan and also took into possession clothes of the deceased. He recorded statements of Manjit Kaur after obtaining the opinion that she was in a fit condition to make a statement. The accused Pawanjit Singh, appellant was arrested and challan was filed.

Gist of the prosecution evidence is as under:-

PW1 Dr. Hartirath Singh on 12.11.1991 radiologically examined Manjit Kaur and on 13.11.1991 he also radiologically examined Baltej Singh.

PW2 Dr. Sukhbir Singh on 12.11.1991 medico legally examined Manjit Kaur and found the following injuries on her person:-

1. Superficial burns left pinna, 2.5 cms x 0.5 cm on outer aspect.
2. Superficial burns left elbow outer, portion 5 cms x 3 cms.
3. Superficial burns right fore-arm lower part 5 cms x 3 cms.
4. Superficial burns right fore-arm in middle 4 c cms x 1 cm.
5. Wound of entry on back of right thigh medial side at the junction of middle and upper third 0.5 cm x 0.5 cm with inverted margins going forward and opening on the medial side anterierly in wound of exit 1.5 cm x 1 cm with everted margins. Blood stained fluid was present on pressing the part. Xray was advised.

PC is the correct carbon copy of the medico legal report and Ex.PG/1 is the pictorial diagram showing the seat of injuries.

PW3 Dr. Pawan Kumar Mangla on 12.11.1991 conducted post mortem examination on the dead body of Kulwinder Kaur and found the following injuries:-

1-a. A lacerated punctured wound with inverted margin measuring ½ cm x ½ cm present on the back of the left chest in the lower scapular region. Clotted blood was present. Scapula fractured.

1-B. Lacerated punctured wound with everted margin measuring 3 cms x 2.5 cms present on the right chest, lateral wall 6 cms below the right axilla, Clotted blood was present. This wound communicated with injury No.1-A.

2. Burn marks 6 cms x 3 cms on right hand.

Palmer surface on the-nar prominance.

In the opinion of the doctor, the cause of death in this case was due to injury to both lungs and heart as a result of fire arm, which was sufficient to cause death in the ordinary course of nature of the injuries and that all the injuries were ante mortem in nature. He also proved Ex.PD the carbon copy of the post mortem report and Ex.PD/1 the pictorial diagram showing the seat of injuries.

On the same day, Dr. Pawan Kumar Mangla also conducted post mortem examination on the dead body of Pardeep Singh and observed the following injuries:-

1-A. A lacerated punctured wound with inverted margins measuring ½ cm x ½ cm present on the back of left chest. 3

cms from the mid line and 9 cms below the C-7 spine. Clotted blood was present.

1-B. A lacerated punctured wound with everted margins measuring 4 cms x 2 cms was present on the left lateral lower third of chest. Clot5ted blood was present. Ribs were fractured. This wound communicated with wound No.1-A.

1-A. A lacerated punctured wound with inverted margins ½ cm ½ cm present on the right mid scapular region. Clotted blood was present.

2-B. A lacerated punctured wound with everted margins measuring 15 cms x 6 cms present on the lateral wall of right chest in its middle third. Ribs were fractured. Muscles were lacerated. Clotted blood was present. Wound communicated with wound No.2-A.

3-A. Lacerated punctured wound with inverted margins ½ cm x ½ cm present on the right side lower back of abdomen. 10 cms above natal cleft. 4 cms from mid line. Clotted blood was present.

3-B. A lacerated punctured wound with everted margin measuring 5 cms x 5 cms was present on the right iliac fossa. Small intestines and mesentry were coming out. Fat of abdomen and muscle were also jutting out of the wound. Clotted blood was present. This wound communicated with wound 3-A.

4-A. A lacerated punctured wound with inverted margins measuring ½ cm x ½ cm present on the left hip 11 cms from the anterior superior iliac spine. Clotted blood was present.

4-B. A lacerated punctured wound with everted margins 13 cms x 7 cm was present on the lateral side of left thigh in its upper third. Clotted blood was present. This wound communicated with wound 4.A.

5-A. A lacerated punctured wound with inverted margins measuring ½ cm x ½ cm present on the back of the right thigh. 6 cms above the knee joint. Clotted blood was present.

5-B. A lacerated punctured wound with everted margins measuring 13 cms x 5 cms present on the lateral aspect of right thigh. Clotted blood was present. This wound communicated with wound 5-A.

5-C. A lacerated punctured wound with everted margins measuring 10 x 8 cms present on the front of right thigh just below the right iliac fossa and merging with wound 3-B. This wound communicated with wound 5-A and 5-B. Clotted blood was present and muscles were lacerated.

In the opinion of the doctor, the cause of death in this case was due to injuries to both lungs, heart, intestines as a result of fire arms, individually as well as collectively, which were sufficient to cause death in an ordinary course of nature and all the injuries were ante mortem in nature. He also proved Ex.PG the carbon copy of the post mortem report and Ex.PG/1 the pictorial diagram showing the seat of injuries.

On the same day Dr. Pawan Kumar Mangla also medico legally examined Baltej Singh and noticed the following injuries:-

1. A blackish burn mark measuring 7 x 2½ cms present on the left scapular region 6 cms below the left acromial process. Burn was in cuticle deep. No vesical formation. No oedema was present.
2. A vesicle 15 cms 1 cm was present on the left ring finger. Palmer surface distal phalanx.
3. A vesicle 1.5 cm x 1 cm present on the left middle finger palmer surface distal phalanx.
4. A vesical measuring 2 ½ cms x 2 cms present on the left pypothenar eminance of hand.
5. A vasicle measuring 5 cms x 3 cms present on the planter surface of left foot on the lateral edge.
6. A vesicle 7 cms x 3 cms present on the palmer surface of right hand, hypothener prominence.
7. On examination-chest was full of wheezes and course creptus. Temperature was 99-2.

The doctor also proved Ex.PK the carbon copy of the medico legal report and Ex. PK/1 the pictorial diagram showing the seat of injuries.

PW4 Ravinder Singh on 25.9.1993 prepared scaled site plan Ex.PM.

PW5 Rupinder Singh is the complainant and eye witness, whereas, PW6 Baltej Singh and PW7 Manjit Kaur are injured/eye witnesses.

PWs SI Amarjit Singh is the Investigating Officer of the case.

PW9 SI Hardev Singh arrested accused Pawanjit Singh on 26.12.1991.

The accused in his statement under Section 313 Cr.P.C. denied the prosecution allegations and pleaded his false implication. He stated that he was arrested on 17.12.1991, to which effect telegrams were also given by his brother and he was falsely implicated. He also examined DW-1 Ajaib Singh, DW-2 Surjit Singh, DW-3 Assa Singh, DW-4 Nirmal Singh, DW-5 Ramnik Singh Sodhi, Advocate and DW-6 Mr. P.S. Dhanju, Advocate.

After considering the evidence on record, the trial Court held the case of the prosecution, to have been fully proved against the appellant and convicted and sentenced him as under:-

"i)	U/s 148 IPC	R.I. for one year;
ii)	U/s 449 IPC	R.I. for ten years and to pay a fine of Rs.500/- or in default of payment of fine to further undergo R.I. for three months;
iii)	U/s 302/149 (For causing death of Kulwinder Kaur)	Life imprisonment and to pay a fine of Rs.1000/- or in default of payment of fine to further undergo R.I. for six months.
iv)	U/s 302/149 (for causing death of Pardeep Singh)	Life imprisonment and to pay a fine of Rs.1000/- or in default of payment of fine to further undergo R.I. for six months.
v)	U/s 307/149 (for murderous assault on Manjit Kaur).	R.I. for seven years and to pay a fine of Rs.500/- or in default of payment of fine to further undergo R.I. for three months;
vi)	U/s 307/149 (For murderous assault on Baltej Singh).	R.I. for seven years and to pay a fine of Rs.500/- or in default of payment of fine to further undergo R.I. for three months;
vii)	U/s 436 IPC	R.I. for ten years and to pay a fine of Rs.500/- or in default of payment of fine to further undergo R.I. for three months;

All the substantive sentences shall run concurrently."

Following findings have been recorded by the trial Court:-

(i) Delay in recording the FIR was not fatal to the case of the prosecution; 10-12 assailants had opened the attack, resulting in deaths and injuries to two persons; Rupinder Singh could not dare to go to the Police Station on account of fear.

(ii) Evidence of PW-5 Rupinder Singh, PW-6 Baltej Singh, PW-7 Manjit Kaur was consistent on all material points regarding time, date, place and manner of occurrence. Their presence at the place of occurrence was natural and their version was consistent with medical evidence.

(iii) The accused Pawanjit Singh was also known as Pamma and was described as such in the FIR itself and his identity was clearly established.

We have heard learned counsel for the parties and perused the record.

Learned counsel for the appellant submitted that there was long delay of 15 hours in lodging of the FIR and there was further delay in special report reaching the Illaqa Magistrate. He further submitted that police papers reached the doctor at 2 P.M. on 12.11.1991 and thus, there was scope for introduction of a false witness and also naming of a false accused. Presence of PW-5 Rupinder Singh was doubtful as he did not intervene by firing from his gun and his presence was not shown in the site plan. He did not also mention that one assailant had also been killed in the cross-fire. PW-6, Baltej Singh also did not name Rupinder Singh as a witness. According to him, he was brought to the hospital by Harnek Singh, but Harnek Singh was not examined. The accused was arrested on 17.12.1991, which was shown by telegram Exh.DC, while according to the Investigating Officer, he was arrested on 26.12.1991. Thus, he was kept in illegal custody and was falsely implicated.

Learned counsel for the State supported the conviction and sentence of the appellant.

We do not find any merit in the contentions raised on behalf of the appellant.

The material witnesses of the prosecution, namely, Rupinder Singh, complainant-eyewitness (PW-5), Baltej Singh (PW-6) and Manjit Kaur (PW-7) injured-eye witnesses have deposed in a similar fashion. They stuck to their stand even during their lengthy cross-examinations and nothing of importance could be elicited in favour of the defence. Baltej Singh (PW-6) even suffered injuries at the spot and lost his two children as well. It was not expected of him to immediately rush to the Police Station and lodge a report about the incident. In the facts and circumstances of the case, delay of 15 hours in lodging of the FIR and there was further delay in special report reaching the Ilaqa Magistrate was not fatal to the case of the prosecution. The fact that the matter was not reported to the police at the earliest is clearly established from the testimony of Rupinder Singh, the brother of Baltej Singh (PW-5) who deposed that on 11.11.1991 at about 6/6.30 P.M. when he was present in his chubara, he saw 10-12 persons coming towards his house and they were armed with fire arms. He, out of fear, climbed on the roof of chubara of his house and remained there throughout the night. Though he was having a licensed rifle with him, but he did not fire as the assailants were more in number. It was on the next morning that he got down from the roof of chubara of his house and along with his neighbour Chamkaur proceeded to Police Station to lodge a report. We find that there is no change in the version contained in the FIR and the deposition made by him before the trial Court. The testimony of this witness stands fully corroborated through the mouth of Baltej Singh (PW-6), who deposed that on 11.11.1991 at about 6/6.30 P.M. he along with his wife Manjit Kaur and

his children Pardeep Singh and Kulwinder Kaur deceased was present in the room of his house. They were all watching the television. The door of the house was bolted from inside. Three persons came in the courtyard of his house and asked him to open the door. He saw the assailants through the window. Among them was Yadwinder Singh @ Yadu (deceased), Paramjit Singh alias Pamma of village Fateh Ulle Shah and the third person was Kewal Singh of village Chatre. They were armed with assault rifle each. Some persons were standing on the roof of his house and some were felt moving on the roof of his house. They were also armed with fire arms. Along with them was Pawanjit Singh accused, now present in the Court and Kewal Singh of village Chatre.They asked me to open the door, but he did not open the door. Then they started abusing him and were asking him to bring out his brother-in-law Balbir Singh, who was in the police department. They started firing towards him. He also fired at them. The assailants fired number of shots towards him. The assailants made a hole in the roof of the adjoining room and threw a grenade in it and burnt the room. The assailants also made a hole in the wall of the room, where they were present and tried to throw grenade.With the fire, articles of the house started burning as a result of which, his children Pardeep Singh and Kulwinder Singh died at the spot. Manjit Kaur, his wife, also got injured and fell down. He continued firing at the assailants with the service rifle, which was issued to him by the police department. In that process, his hands and soles of the feet were burnt. The statement of this witness also finds support from the testimony of Manjit Kaur, wife of Baltej Singh, who stepped into the witness box as PW-7 and narrated the whole incident in the manner in which it has been deposed by Baltej Singh, her husband. In such like circumstances, the explanation furnished by the prosecution for not reporting the matter to the police is genuine and well founded. It is well settled law that in case presence of the

eye witnesses is doubtful, then delay on the receipt of the said report by the Magistrate can only be attributed to the negligence or conduct of the officials interested with the task of giving special report to the Magistrate and would not have bearing on the merits of the case. Moreover, in our considered view, there is nothing on record to show that the intervening time was consumed for fabricating false version and in such like circumstances, when the cogent and valid reason has been given with regard to not reporting the matter to the police promptly and there is nothing to suggest that there was any consultations or deliberations or confabulations, then delay with regard to receipt of the special report by the Magistrate in the instant case, cannot demolish the prosecution case and is not fatal to the prosecution in any manner. The learned trial Court has rightly pointed out that the court has to scrutinize the prosecution evidence otherwise also in order to ascertain if the alleged eye witnesses were actually present at the spot and witnessed the occurrence and that the intervening period has not been utilised for fabricating the prosecution version and introduction of false witnesses. The learned trial Court has rightly concluded that delay in lodging the FIR is not fatal to the case of the prosecution.

Name of the appellant is mentioned in the first version itself along with his parentage and place of residence. He was, thus, clearly identified. There is no reason to doubt presence of Rupinder Singh in his own house at 6/6.30 P.M. He has no reason to falsely implicate the appellant. Delay in recording the FIR cannot be held to be unexplained. A ghastly crime was committed, resulting in death of two children. Explanation given by PW-5 Rupinder Singh that he was frightened and did not dare to go to the police station immediately in the night, is quite reasonable. Baltej Singh, injured, who lost his two children and suffered injuries could not walk upto the police station. He was also under fear. Mere delay in lodging the FIR, cannot be held to be fatal to throw out the prosecution

version, which is otherwise reliable and corroborated by the circumstances brought on record. Merely because the appellant was described as Pamma instead of Pawanjit Singh, was of no consequence. It has been duly explained that he was known as Pamma. It could not be held that it was so dark that the accused could not be identified. Moreover, the accused themselves lit the fire. Testimony of Rupinder Singh is fully corroborated by Baltej Singh, who is a stamped witness. The defence tried to rely upon an affidavit Exh.DC/1, attested by DW-5 Mr. Ramnik Singh, Notary. The said affidavit was denied by Rupinder Singh and genuineness thereof does not stand proved to the satisfaction of the Court. PW-6 Baltej Singh also clearly implicates the appellant, who is an injured witness. His two children died in the incident and he and his wife were injured. He had no reason to falsely implicate the appellant. His presence on the spot is undisputed. PW-9 Hardev Singh, SI arrested the accused. He was duly cross-examined and he has denied that he arrested the accused on 17.12.1991. Mere giving of a telegram by the father of the accused, was not enough to doubt the testimony of Hardev Singh, PW-9 about the accused having been arrested on 26.12.1991. In any case, there is no question of false implication in view of direct evidence of the stamped witnesses. Case of the prosecution, thus, stands fully proved.

Accordingly, we affirm the conviction and sentence of the appellant.

The appeal is dismissed.

(ADARSH KUMAR GOEL)
JUDGE

January 31, 2007
ashwani

(H.S. BHALLA)
JUDGE